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**Federal Registration of Judgments Act Allows  
Execution Upon Foreign Judgment Although  
Suit on Judgment Is Time Barred in  
Registration State—*Stanford v. Utley*\***

Appellant obtained a money judgment against appellee in a Mississippi federal court and registered it the next day in a Missouri federal court, pursuant to section 1963 of Title 28 of the United States Code.<sup>1</sup> Seven and one-half years later appellant gave notice in Missouri of his intention to take appellee's deposition to discover assets in that state with which to satisfy the judgment. Appellee's motion to prohibit the deposition was sustained on the ground that no execution could issue upon any assets uncovered, since under applicable Missouri law<sup>2</sup> no action could be brought there on a Mississippi judgment more than seven years old; the necessity of a

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\* 341 F.2d 265 (8th Cir. 1965).

1. Section 1963, 62 Stat. 958 (1948), provides in pertinent part:

"A judgment in an action for the recovery of money or property now or hereafter entered in any district court which has become final by appeal or expiration of time for appeal may be registered in any other district by filing therein a certified copy of such judgment. A judgment so registered shall have the same effect as a judgment of the district court of the district where registered and may be enforced in like manner. . . ."

"There seems little to say [about the enactment of the statute] except to express surprise that it was not done sooner." Goodrich, *Yielding Place to New—Rest Versus Motion in the Conflict of Laws*, 50 COLUM. L. REV. 881, 890-91 (1950).

2. Missouri conflict of laws rules were held applicable in the principal case under the rule of *Klaxon v. Stentor Elec. Mfg. Co.*, 313 U.S. 487 (1941). See *Stanford v. Utley*, 341 F.2d 265, 268 (8th Cir. 1965) (hereinafter cited as principal case). See also text accompanying notes 14 & 15 *infra*. Mo. REV. STAT. § 516.180 (1949), a provision commonly called a borrowing statute, requires Missouri courts to apply the statute of limitations of the state in which the original judgment was rendered to suits upon that judgment in Missouri. MISS. CODE ANN. ch. 2, § 733 (1942), demands that all actions in Mississippi founded on a judgment of a Mississippi court be brought within seven years after the rendition of the judgment.

suit in Missouri to enforce the original judgment was not alleviated by the fact that it had been registered in Missouri within seven years of its rendition. On appeal, *held*, reversed. Although suit in Missouri on the Mississippi judgment would be time barred at present, appellant's registration of his judgment in a Missouri federal court the day after its rendition in Mississippi was equivalent to his obtaining a Missouri judgment upon the Mississippi judgment on the date of registration; therefore, Missouri's ten-year limit upon execution of judgments of its own courts is controlling.<sup>3</sup>

There has been a gradual expansion of the extraterritorial enforcement remedies available to judgment creditors in some common-law jurisdictions. In 1801 England initiated a judgment registration procedure which today covers the various units of the Empire.<sup>4</sup> It allows a judgment creditor to file a certified copy of the judgment of one Empire court in a court of another Empire country and to execute upon it there as if it had originally been rendered in the second forum.<sup>5</sup> Australia and Canada have statutes establishing a similar procedure among their states and provinces.<sup>6</sup> In the United States, however, the most common ritual for enforcing a judgment of the court of one state in a sister state is more complex. The original judgment is made the basis of a cause of action in the second state resulting in the rendition of a second judgment, and it is upon this judgment that execution finally issues.<sup>7</sup> Since this procedure is burdensome and expensive, attempts have been made to provide alternative methods of enforcing foreign judgments. A number of states allow the judgment creditor to move for summary judgment and thus obtain relief without a full trial,<sup>8</sup> while others

3. See note 2 *supra*. Mo. REV. STAT. § 516.350 (1949) provides: "[A]fter the expiration of ten years from the date of the original rendition or revival [of a judgment in Missouri] . . . such judgment shall be conclusively presumed to be paid, and no execution, or order or process shall issue thereon, nor shall any suit be brought, had or maintained thereon for any purpose whatever."

4. The development is found in these statutes: The Crown Debts Act, 1801, 41 Geo. 3, c. 90; The Judgments Extension Act, 1868, 31 & 32 Vict., c. 54; The Inferior Courts Judgments Extension Act, 1882, 45 & 46 Vict., c. 31; Administration of Justice Act, 1920, 10 & 11 Geo. 5, c. 81.

5. The most recent legislation, the Administration of Justice Act, 1920, 10 & 11 Geo. 5, c. 81, provides that from the date of its registration under the act a judgment is "of the same force and effect, and proceedings may be taken thereon, as if it had been a judgment originally obtained or entered upon the day of registration in the registering court."

6. Service and Executions of Process Act, 1901-1912, II COM. ACTS 291 (Australia); Reciprocal Enforcement of Judgment Act, REV. STAT. ONT. 1937, c. 124 (Ont.). See generally Leflar, *The New Uniform Foreign Judgments Act*, 24 N.Y.U.L. REV. 336, 345 n.25 (1949).

7. See *Cole v. Cunningham*, 133 U.S. 107 (1890); *McElmoyle ex rel. Bailey v. Cohen*, 38 U.S. (13 Pet.) 312 (1839); 2 BEALE, CONFLICT OF LAWS § 433.1 (1935); Yntema, *The Enforcement of Foreign Judgments in Anglo-American Law*, 33 MICH. L. REV. 1129, 1144 (1935).

8. Leflar, *supra* note 6, at 349 n.38. A summary judgment procedure allows the

have adopted the Uniform Enforcement of Foreign Judgments Act,<sup>9</sup> permitting a judgment creditor to register his foreign judgment in a sister state which has adopted the legislation. Since registration itself is not equivalent to a new judgment, execution cannot immediately issue. Nevertheless, the creditor can levy at once upon the debtor's property in the registration state to prevent him from disposing of it prior to the rendition of the second judgment.<sup>10</sup>

To facilitate the enforcement of some foreign judgments<sup>11</sup> in federal courts, Congress in 1948 enacted section 1963 of Title 28 of the United States Code, which provides for the voluntary registration in any federal district of final judgments in actions for the recovery of money or property rendered by a federal district court of any other district. The section further provides that registered judgments are to be given the "same effect" they would have if they had been rendered by the registration court.<sup>12</sup> Relying upon the quoted language, the court in the principal case concluded that section 1963 is more than a procedural step in the process of collecting a foreign judgment in a federal court. According to its reasoning, the registration of a foreign judgment is equivalent to the rendition of a judgment in the second forum upon that foreign decree.<sup>13</sup> Therefore, a foreign judgment may be registered in a federal court sitting in a sister state at any time when suit could be commenced upon it in the second jurisdiction. Furthermore, once a judgment has been registered it may be satisfied during the period permitted by the registration state for execution upon a judgment of its own courts. Since Rule 69 of the Federal Rules of Civil Procedure<sup>14</sup> generally requires a federal court to follow, in matters of execution,

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party seeking recovery to move for judgment shortly after the commencement of the action. The motion is granted if, from the pleadings and affidavits which may be filed by any party, it appears that there is no genuine issue of material fact. The procedure is peculiarly applicable when the cause of action is upon a foreign judgment, since the judgment debtor's defenses are very limited. See generally Clark, *The Summary Judgment*, 38 YALE L.J. 423 (1929); 33 PA. B.A.Q. 278 (1962). Similar economy could be achieved, of course, if the judgment debtor allowed a default to be taken against him.

9. 9A UNIFORM LAWS ANN. 287 (1957).

10. Paulsen, *Enforcing the Money Judgment of a Sister State*, 42 IOWA L. REV. 202-03 (1957). The author uses *Tolley v. Wilson*, 121 Ark. 163, 205 S.W.2d 177 (1947), as an example of how the cumbersome nature of the formal action on the foreign judgment gives the judgment debtor an opportunity to dispose of his assets before the judgment creditor's claim can be satisfied.

11. Foreign judgments, within the meaning of § 1963, are those rendered by a United States district court in another American jurisdiction; the provision does not apply to judgments of courts of foreign countries.

12. See note 1 *supra*.

13. *Accord*, *Hanes Supply Co. v. Valley Evaporating Co.*, 261 F.2d 29 (5th Cir. 1958).

14. FED. R. CIV. P. 69 provides: "The procedure on execution, in proceedings supplementary to and in aid of a judgment . . . shall be in accordance with the practice and procedure of the state in which the district court is held . . . except that any statute of the United States governs to the extent that it is applicable. . . ."

the practice of the state courts in the jurisdiction in which the federal court sits—a directive which has been construed as requiring federal courts to adhere to local time limits on execution<sup>15</sup>—the result in the principal case is justified if a registered judgment is in fact identical to a judgment on a judgment.

If section 1963 was designed to make a registered judgment interchangeable with a judgment on a judgment, it failed in one potentially significant regard. A final judgment of one court may sometimes be attacked, and its enforcement prevented, upon certain limited grounds when the judgment creditor seeks to satisfy it in another state.<sup>16</sup> Ordinarily the judgment debtor may raise these defenses when suit upon the original judgment is commenced in the second forum, because the judgment creditor bringing the action must observe all the formalities incident to any suit, including notification to the judgment debtor of its pendency.<sup>17</sup> Of course, the judgment creditor must bring his suit in the second state within the period allotted by the local statute of limitations. Normally, notice will be served upon the judgment debtor shortly after the action is begun and, in fact, *must* be given within a reasonable time thereafter.<sup>18</sup> These time limits have the combined effect of forcing the debtor, or his representative if he is dead, to rely upon only relatively recent history to formulate a defense to the creditor's action. Indeed, the enactment of any statute of limitations is partially motivated by the legislature's desire that the evidence necessary to sustain the defendant's effort to protect his rights be relatively fresh and accessible.<sup>19</sup> The rule that notice must be given to the defendant shortly after suit is commenced also assists in accomplishing this purpose.<sup>20</sup> The problem toward which these measures are directed could be most acute where the cause of action is based upon a foreign judgment taken by default against a now deceased defendant. Unlike the situation in many types of claims against an estate where those close to the decedent are likely to have some awareness of the circumstances of the claim and thus a starting point from which to build a defense in his absence, it is probable that the judgment creditor is the only living person who knows whether the alleged judgment debtor was properly served with the process of a court which had jurisdiction prior to default. Section 1963, however,

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15. *Miller v. United States*, 160 F.2d 608, 609 (9th Cir. 1947).

16. The judgment debtor may defend on such grounds as lack of jurisdiction in the original court, fraud in obtaining the judgment, or prior satisfaction of the judgment. See generally RESTATEMENT, JUDGMENTS §§ 4-11 (1942); *id.*, Explanatory Notes § 47(e) (1942).

17. See Leflar, *supra* note 6, at 346-48; Paulsen, *supra* note 10, at 202; Yntema, *supra* note 7, at 1144.

18. See *Murphy v. Citizens Bank*, 244 F.2d 511, 512 (10th Cir. 1957); *Hoffman v. Wair*, 193 F. Supp. 727, 733 (D. Ore. 1961); 9 MD. L. REV. 74, 77-78 (1948).

19. See *Chase Securities Corp. v. Donaldson*, 325 U.S. 304, 314 (1944).

20. See *Barthel v. Stamm*, 145 F.2d 487, 491 (5th Cir. 1944).

leaves the judgment debtor at a disadvantage because it lacks a provision requiring that notice of the fact of registration be given him at the time registration occurs. Unless he happens to discover that a judgment against him has been registered, therefore, a judgment debtor would not necessarily become aware of the claim until execution—when his property is actually seized or when, as in the principal case, he receives notice of the creditor's intention to take his deposition to uncover assets.

As construed by the principal case, section 1963 allows registration of a foreign judgment any time within the registration state's statute of limitations applicable to suits upon such judgments, and execution upon it any time thereafter within the period allowed by the same state's statute for execution upon judgments of its own courts. Had the appellant in the principal case both registered his judgment and sought execution upon it at the latest dates permissible under the court's interpretation of section 1963, almost seventeen years<sup>21</sup> would have elapsed from the date the original judgment was rendered to its execution or until appellee would necessarily have received notice that a purportedly valid claim was pending against him. Thus, notice could have been delayed years beyond the deadline applicable if the judgment creditor had been forced to rely upon the traditional enforcement process requiring him to sue on the original judgment in Missouri within ten years after its rendition in Mississippi, and to serve process within a reasonable time after commencing the Missouri suit.

Enforcement procedures analogous to section 1963 require that a judgment debtor be given notice of the claim against him and an opportunity to defend his interests at the time of registration. The English Administration of Justice Act, which is quite similar in many respects to section 1963,<sup>22</sup> demands that the registration court make rules "for the service on the judgment debtor of notice of the registration of the judgment."<sup>23</sup> Similar notice requirements currently a part of the Uniform Enforcement of Foreign Judgments Act have been kept intact in the Commissioner's proposed revision, which is designed to make registration under the act equivalent to the rendition of a final judgment in the registration state. This effect of the proposed revision is in explicit imitation of section 1963 as the Commissioners interpreted it even before the instant decision.<sup>24</sup>

21. The judgment creditor could register his judgment just within the seven-year limit from the date of its rendition in Mississippi set by Miss. CODE ANN. ch. 2, § 733 (1942), and made applicable in Missouri by the latter's borrowing statute, Mo. REV. STAT. § 516.180 (1949). He would then have an additional ten years to execute upon it under Mo. REV. STAT. § 516.350 (1949). See notes 2 & 3 *supra*.

22. See note 5 *supra*.

23. 10 & 11 Geo. 5, c. 81, pt. II, § 9(4).

24. ALI, REPORT OF THE COMMITTEE TO COOPERATE WITH THE ALI OF THE NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAW 94, 290-91 (1964). Even though registration is equivalent to a final judgment under the proposed revision, individual

The court in the principal case construed the statute before it in the way most beneficial to judgment creditors. Certainly no fault can be found with this, for the section was designed to assist creditors in enforcing judgments. An amendment to section 1963 modeled on the notice provisions of the Administration of Justice Act or the Uniform Act, however, would guarantee that no unwarranted benefit to the judgment creditor could be gained at the expense of his debtor. In the meantime, courts should be reluctant to view the principal case as meaningful precedent unless they are satisfied that the judgment debtor has not been prejudiced by the delaying of notification of his opponent's claim beyond the time he would have received it were there no federal registration of judgments legislation.

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state legislatures may elect, under proposed § 3(c), to suspend execution for a limited period after registration, presumably to allow the judgment debtor to raise any defenses he may have to the original judgment before the registered judgment is satisfied.

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